

1918

GUMANAN  
v.  
JAHANGIRA.

setting aside the decree of the court below dismiss the plaintiff's suit with costs throughout.

*Appeal allowed.*

1918  
March, 22.

*Before Mr. Justice Tuobati and Mr. Justice Abdul Rasool.*

KUNJ BEHARI LAL (DEFENDANT) v. THE BHARGAVA COMMERCIAL BANK, JUBBULPORE (PLAINTIFF) \*

*Act No. IX of 1872 (Indian Contract Act,) section 176—Pledge—Sale by pawnee of property pledged—Notice of sale.*

The words - "He may sell the things pledged on giving the pawnee reasonable notice of the sale" - as used in section 176 of the Indian Contract Act, 1872, mean that the pawnee must give reasonable notice of his intention to sell: it does not necessarily mean that a sale should be arranged beforehand and that due notice of all the details should be given to the pawnee.

THE facts of this case were as follows:—

In 1912, the plaintiff Bank advanced a loan of Rs. 1,700 to the defendant on the security of certain ornaments which were pledged with the Bank for that purpose. From January, 1914, onwards the Bank began to press for re-payment and gave repeated notices of their intention to sell the ornaments in satisfaction of their dues. The defendant, on various occasions, asked for and obtained time for payment. Ultimately, on the 15th of September, 1914, the Bank gave notice that if the account was not settled within a fortnight they would sell the ornaments without further reference. The money not having been paid, the Bank sold the ornaments on the 5th of October, 1914. The sale proceeds proved insufficient to discharge the debt in full and the present suit was accordingly brought to recover the balance. The defendant pleaded that proper notice had not been given and the ornaments had been sold at an under-value. He urged that he should be given credit for the full value of the pledge. The lower courts held that the notice given was reasonable, and though the sale had been at some under-value, yet the Bank not being guilty of fraud or any other irregularity, was not liable for the loss suffered by the defendant. The suit was accordingly decreed. The defendant appealed to the High Court.

Pandit *Kailas Nath Katju*, for the appellant, submitted that on a true construction of section 176 of the Indian Contract Act

\* Second Appeal No. 950 of 1915, from a decree of D. R. Lyle, District Judge of Agra, dated the 7th of June, 1913, confirming a decree of Chatur Behari Lal, Munsif of Agra, dated the 31st of March, 1916.

the pawnee was bound to give reasonable notice not only of his intention to sell but of the actual sale itself. Under section 177 the pawnor had a right of redemption up to the moment of the actual sale of the goods pledged. This provision of the law would become nugatory if it were open to the pawnee to sell the goods whenever he liked, provided he had given reasonable notice of his intention to sell. The power of private sale is one liable to be gravely abused to the serious injury of the pledgor, and the Legislature might well have intended, having regard to the conditions prevailing in this country, that the sale of a pledge should only take place in the presence of the pledgor, or with notice to him of the date and time of sale, so that he might have an opportunity of being present at the sale, if he wished to do so. The language of the section itself pointed to that conclusion. Notice was required of "the sale," and not of "the intention to sell." If the Legislature had intended otherwise it could easily have used more apt and explicit language, as it had actually done in section 107 of the Act, and section 69 of the Transfer of Property Act. The fact that the language of section 176 was different from section 107 of the Contract Act made it clear that the same thing was not intended. The presumption was that to convey the same meaning the Legislature would use the same language throughout the same Statute. Reference was also made to the passage in Story on Bailments, 5th edition, section 310, page 322, that the pawnee "may file a bill in equity against the pawnor for a foreclosure or sale, or he may proceed to sell, *ex mero motu, upon giving due notice of his intention to the pledgor,*" and it was argued that the framers of the Indian Contract Act would, had they intended to adopt Story's view of the law, have used similar language.

The Hon'ble Munshi *Narayan Prasad Ashithana* (with him Babu *Mangal Prasad Bhargava*), for the respondent, was not called upon, but referred to Cunningham and Shephard, Contract Act, 10th ed, p. 410.

TUDBAL and ABDUL RAOOF, JJ. :—The facts of this case are simple. The appellant defendant pawned to the respondent Bank certain gold and silver ornaments as security for a loan in the year 1912. In January, 1914, the Bank pressed the defendant

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for payment and stated that they had an offer of Rs. 1,480 for the ornaments and that if the defendant did not pay within a week the ornaments would be sold for the value offered and a suit would be brought for the balance. The defendant in reply asked for full particulars of the offer and also asked for time for payment. In his reply, he stated that the ornaments were worth more than Rs. 2,400 and that he would hold the Bank responsible if they were sold for less than their value. The Bank on the 26th of February, 1914, sent in a statement of account and a list of the ornaments pawned and again gave the defendant fifteen days' time within which to pay, otherwise the Bank would sell. The Bank did not carry out its threat. On the 9th of May, 1914, the defendant again asked for 15th days' time as he had a chance of paying off the debt. The correspondence continued, and again on the 18th of August, 1914, the Bank wrote to the defendant stating that it had an offer of Rs. 1,500 for the ornaments and would proceed to sell. On the 25th of August, the defendant asked for further time. On the 12th of September the Bank agreed and then on the 15th of September it again wrote to the defendant saying that unless the money was paid within 15 days the jewelry would be sold without further reference to him. The Bank did not sell on the 30th of September, but it actually waited till the 5th of October and then carried out the sale. A suit was then brought for the balance and both the courts below have decreed the claim. One point was urged in the court below, and that is that the notice given on the 15th of September, was not a reasonable notice of the sale within the meaning of section 176 of the Contract Act. It was contended that notice of the actual date, time and place of the intended sale should have been given to the defendant. This plea was repelled by the court below. It has again been raised before us and this is the only point for our decision. It is urged that under section 177 the pawnor has a right to redeem at any subsequent time before the actual sale of the goods, that unless he is given full information of the date, time and place of the sale, it is impossible for him to redeem, if the property were sold at some other date, time or place. No ruling on the point has been cited. In our opinion section 176

does not contemplate that the pawnee should give the pawnor information of the actual date, time and place of sale. The words are :—" He may sell the thing pledged on giving the pawnor reasonable notice of the sale." This, in our opinion, means an intention to sell, and it does not necessarily mean that a sale should be arranged beforehand and that due notice of all the details should be given to the pawnor. For instance it would be open to the pawnee to put up the property to auction sale and to sell it to the highest bidder. It would be impossible for him to give the pawnor information beforehand as to who would be the final purchaser. It is quite clear that all that the law intends is that the pawnee should give the pawnor a reasonable time within which to exercise his right of redemption and proceed to sell if the property be not redeemed. His right to sell is analogous to the seller's right of re-selling granted under section 107 of the Contract Act, and we take it that the two rights must be exercised in more or less the same method. The seller's right to re-sell under section 107 may be exercised after giving notice to the buyer of the intention to re-sell after the lapse of a reasonable time. The language of the two sections is slightly different, but their meaning is practically the same. In our opinion in the circumstances of the present case the respondent Bank gave the appellants notice, and a very reasonable notice indeed, of the intended sale. We think the decision of the court below is correct. We therefore dismiss the appeal with costs.

*Appeal dismissed.*

## REVISIONAL CIVIL.

*Before Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.*  
CHATURI SINGH (PLAINTIFF) v MUSAMMAT RANIA AND ANOTHER  
(DEFENDANTS.)\*

*Civil Procedure Code (1908), section 24—Act No. IX of 1887 (Provincial Small Cause Courts Act), section 35—Transfer of Small Cause Court suit—Appeal—Jurisdiction.*

A Small Cause Court suit valued at Rs. 273 was pending in the court of a Subordinate Judge who had Small Cause Court jurisdiction up to Rs. 500. The Subordinate Judge went on leave and was succeeded by an officer whose Small Cause Court jurisdiction was limited to Rs. 250. Subsequently, by

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